Cr. 132

(1) (3)

Division Bench

BEFORE THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

M.A.(C) No. ...41...../2006 2007

APPELLANTS

1. Laxmi Bai widow of Kheduram Yadav, aged 35 years.
2. Indarbati widow of Patruram Yadav, aged 60 years.
3. Ku. Yashoda, D/o Late Kheduram Yadav, agaed 19 years.
4. Sanjay Kumar,S/oLate Kheduram Yadav aged 17 years.
5. Ku. Nirmala Yadav, D/o Late Kheduram Yadav, aged 13 years.
6. Ku. Jayanti, D/o Late Kheduram Yadav, aged 11 years.
7. Ku. Hemlata D/o Late Kheduram Yadav, aged 09 years.

Appellant No. 4 to 7 through legal Gaurdian Laxmi bai w/o. of Kheduram Yadav.

All are resident of Village Anjora, Tahsil and District Rajnandgaon (C.G.)

P.R. No. 3322/06 Presented by Shri Jitendra Gupta 19/12/06

Corrected as per Court order dated 03/01/2007 03/01/07

Allowed

AR(J).

VERSUS

RESPONDENTS.

1. Parasnath, S/o Hansraj Yadav, Aged 43 years, resident of Ramdhari Yadav Ki Chal, Nalpada, Copper Badi Ke pass, Post Sandijbagh, Thana Copper Badi, Distt. Thane, Mumbai (Maharashtra) Through-Royal Transport Co. Shivdi Kolibada, Mumbai, Thana Shivdi, Distt. Thane (Mumbai)
2. M/s Royal Transport Company, Plot 283, Shah Diwan Develper, Mahim Village Paaldhar, Distt. Thane, Mumbai (Mah.)

(2)

(4)

3. Branch Manager,
Branch-Thane,
Through - Divisional Manager,
United India Insurance Co. Ltd.
Krishna Complex, First Floor,
Raipur (C.G.)

MEMO OF APPEAL UNDER SECTION 173 OF THE MOTOR VEHICLES ACT, 1988

HIGH COURT OF CHHATTISGARH : BILASPUR

Division Bench

Coram : **Hon'ble Shri H.L. Dattu, CJ &**
Hon'ble Shri V.K. Shrivastava, J

MISC. APPEAL (C) NO. 41 OF 2007

APPELLANTS: Laxmi Bai and others.

Versus

RESPONDENTS: Parasnath and others.

Present : Shri Jitendra Gupta, counsel for the appellants.
None for other respondents.

ORAL ORDER

(Passed on 15th February, 2007)

The following oral order of the Court was passed by **Vijay Kumar Shrivastava, J.**

This is an appeal under Section 173 of the Motor Vehicles Act, 1988 (henceforth, "the Act, 1988") against the award dated 09/06/2006 passed by Ist Additional Motor Accident Claims Tribunal, Durg (henceforth, "the Tribunal") in Claim Case No. 22/2006, for enhancement of compensation.

2) The factual matrix of the case, in brief, is that on 14/01/2004 at about 10.00 p.m. when Kheduram Yadav (since deceased) riding his vehicle Hero Puch bearing No. CG.07/ZP/5542 was coming from Tedesara to village Anjora, respondent No.1 driving vehicle bearing No. MH-04/BG/6102 in a rash and negligent manner dashed the Hero Puch. Kheduram Yadav sustained injuries and succumbed to those. Appellants who are legal representatives of the deceased filed an application under Section 166 of the Act, 1988 for grant of compensation against the respondents who are driver, owner and insurer of the offending vehicle.

Respondents No.1 and 2 remained ex parte in the case. However, respondent No.3 contested the claim.

3) Learned Tribunal after appreciating the evidence adduced by the appellants, vide impugned award allowed compensation of Rs.3,36,600/- under various heads as below:

a)	Loss of dependency	Rs. 2,81,600/-
b)	Funeral expenses	Rs. 10,000/-
c)	Consortium	Rs. 5,000/-
d)	Loss of expectancy of life.	Rs. 35,000/-
e)	loss of estate	Rs. 5,000/-
	Total	Rs. 3,36,600/-

4) Learned counsel for the appellants contended that learned Tribunal erred in deducting 1/3rd of income from the income of the deceased. Further, urged that towards funeral expenses Rs.10,000/- has been awarded which is on lower side, so also amount awarded on other heads is not just and proper.

5) Laxmi (PW/1) in her evidence stated that her husband was earning Rs.2200/- per month. According to Ex.P/7 issued by employer total emoluments of the deceased was Rs.2124/-, therefore, learned Tribunal accepted the monthly income of the deceased Rs.2200/-. For assessing loss of income, he adopted the method in accordance with Shedule 2 of Section 163-A of the Act, 1988. Learned Tribunal after adjusting 1/3rd towards deceased own expenditure, applying multiplier of 16, recorded a finding and accordingly allowed compensation of Rs.2,81,600/- towards dependency. On some of the other heads, he allowed more than the amount admissible, even he allowed compensation towards loss of

expectancy of life. In absence of any attack on these grants, we are not inclined, at this juncture, to step in to decide its correctness. So far as deduction of 1/3rd from the salary of deceased is concerned, that is according to Schedule 2 of Section 163-A of the Act, 1988, even otherwise, on the facts and circumstances of the case, the said deduction is reasonable and legal.

(6) We are of the considered view that the award passed by the Tribunal does not call for any interference by this Court. In the result, the appeal being devoid of substance deserves to be dismissed and is accordingly dismissed in limine. No costs.

Sd/-
V.K. Shrivastava
Judge

Sd/-
Chief Justice

Raju